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STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY:

PROCEEDINGS AGAINST:

JAMES D. MILLER, PHD,

FINAL DECISION AND ORDER

RESPONDENT

LS0009123PSY

The parties to this action for the purposes of § 227.53, Stats., are:

James D. Miller, Ph.D.

1016 North Lake Road

Oconomowoc, WI 53066

Wisconsin Psychology Examining Board

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Psychology Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. James D. Miller, Ph.D., Respondent, date of birth November 8, 1950, is licensed by the Wisconsin Psychology Examining Board as a psychologist in the state of Wisconsin pursuant to license number 1089, which was first granted March 23, 1984.
2. Respondent's last address reported to the Department of Regulation and Licensing is 416 W. South Street, Oconomowoc, WI 53066. The Division of Enforcement has determined that Respondent's current address is 1016 North Lake Road, Oconomowoc, WI 53066.
3. On July 29, 1998, Respondent was charged in Waukesha County Wisconsin Circuit Court case number 98-CF-539 with:
 - a. One count of violating § 940.22(2), Stats. (Sexual exploitation by therapist), a Class C felony. That count of the criminal complaint alleged that, between approximately March 1, 1989 through March 31, 1993, Respondent had sexual contact during psychotherapy sessions with a client whose date of birth is May 15, 1975.

b. One count of violating § 948.02(1), Stats., (First degree sexual assault of a child – sexual contact with a person who had not attained the age of 13 years), a Class B felony. That count of the criminal complaint alleged that, on or about December 9, 1991, Respondent had sexual contact (hand to penis) during a session with a client, who was four years of age.

4. On December 16, 1999, an Amended Information was filed against Respondent in the Waukesha County criminal matter. The Amended Information stated that Respondent had committed the following offenses

a. COUNT I: Violating § 940.22(2), Stats. (Sexual exploitation by therapist), a Class D felony, for having sexual contact, between approximately March 1, 1989 through March 31, 1993, with a patient during any ongoing therapist-patient or therapist-client relationship.

b. COUNT II: Violating § 948.02(1), Stats., (First degree sexual assault of a child – sexual contact with a person who had not attained the age of 13 years), a Class B felony, for having sexual contact (hand to penis), on or about December 9, 1991, with a child 4 years of age.

5. Respondent pled not guilty and a jury trial was held in the matter. On April 15, 2000, following a seven day trial, the jury rendered verdicts finding:

a. Respondent was guilty of violating § 940.22(2), Stats., (Sexual Exploitation by Therapist), between March 1, 1989 and November 28, 1992, at a time that it was a Class D felony. (Count One in the Amended Information)

b. Respondent was not guilty of violating § 940.22(2), Stats., (Sexual Exploitation by Therapist), between November 29, 1992 and March 31, 1993. (Also Count One in the Amended Information)

c. Respondent was guilty of violating § 948.02(1), Stats. (First Degree Sexual Assault of a Child). (Count Two in the Amended Information)

6. Respondent was convicted on the two counts and on July 7, 2000, Respondent was sentenced as follows:

a. On the count of violating § 940.22(2), Stats., (Sexual Exploitation by Therapist), Respondent was sentenced to three years in prison. Imposition of the sentence was stayed during the pendency of Respondent's appeal of the convictions.

b. On the count of violating § 948.02(1), Stats. (First Degree Sexual Assault of a Child), Respondent was sentenced to 15 years of probation. Imposition of the sentence was not stayed during the pendency of Respondent's appeal of the convictions.

7. §§ 940.22(2) and 948.02(1), Stats., are crimes the circumstances of which substantially relate to the circumstances of the professional practice of psychology.

CONCLUSIONS OF LAW

1. The Wisconsin Psychology Examining Board has jurisdiction over this matter pursuant to § 455.09(1), Stats.

2. The Wisconsin Psychology Examining Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.

3. Respondent, by having violated, and been convicted of, crimes the circumstances of which substantially relate to the circumstances of the professional practice of psychology, has committed unprofessional conduct as defined by Wis. Adm. Code § Psy 5.01(5) and is subject to discipline pursuant to § 455.09(1)(g), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of James D. Miller, Ph.D., to practice as a psychologist in the State of Wisconsin is hereby **REVOKED**, effective immediately.

IT IS FURTHER ORDERED that if Respondent's conviction on either, or both, counts is reversed:

1. Respondent may petition the Board to reinstate his license to practice as a psychologist in the state of Wisconsin.

2. It shall be in the discretion of the Board whether to reinstate Respondent's license, and whether to place any limitations on the license, if the Board does decide to reinstate the license.

3. In exercising its discretion, the Board shall consider, among other things:

a. Whether the reversal was of one or both convictions.

b. The basis for the reversal of the conviction or convictions.

4. If Respondent believes that the Board's refusal to reinstate his license is inappropriate or that any limitation imposed or maintained by the Board under paragraph 2 is inappropriate, Respondent may seek a class 1 hearing pursuant to §227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious. The denial or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 12th day of September, 2000.

Barbara Van Horne, Ph.D.

Chair

Psychology Examining Board